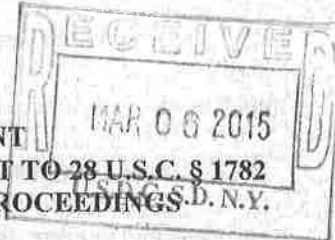


15 MISC 0058

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Application of FRANCK BERLAMONT for an
Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery
for Use in Foreign Proceedings.

Case No. 15 Misc. _____



**DECLARATION OF FRANCK BERLAMONT
IN SUPPORT OF APPLICATION FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782
TO CONDUCT DISCOVERY FOR USE IN FOREIGN PROCEEDINGS**

FRANCK BERLAMONT declares, under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am the founding partner, President and CEO of Geneva Partners. I currently reside in the canton of Geneva in Switzerland. I make this declaration in support of my application for an Order pursuant to 28 U.S.C. § 1782 to conduct discovery for use in foreign proceedings based on personal knowledge. If called as a witness, I could and would testify to the same as stated herein.

2. On behalf of myself and some of my clients, I invested in the Optimal Strategic U.S. Equity Ltd. fund, which was managed by Optimal Investment Services, S.A. ("Optimal"), a subsidiary of Banco Santander, S.A. Optimal invested these funds with Bernard Madoff. Since making these investments, it has become apparent that Optimal made misrepresentations concerning the Madoff accounts, including, but not limited to, misrepresentations concerning its knowledge of counterparties to trades in which Madoff was engaging. As a result of Madoff's fraud and Optimal's misrepresentations, I sustained significant losses, both personally and on behalf of my clients, on the investments I made with Optimal.

3. On the basis of Optimal's misrepresentations, I presented a criminal complaint in June 2009 to an investigating magistrate in Geneva who opened a criminal probe.

4. Manuel Echeverría, the former Director General of Optimal, was later charged with disloyal management with the aim of self-enrichment on the basis of a legal act. The investigation into these charges is ongoing.

5. As the complainant in a criminal proceeding in Switzerland, I have the opportunity to present evidence therein.

6. I bring this proceeding pursuant to 28 U.S.C. § 1782 to obtain a copy of the transcripts and exhibits from the depositions of Bernard Madoff, Hugh Burnaby-Atkins and Jonathan Clark for use in the Swiss criminal proceeding. I understand that Hunton & Williams LLP (“H&W”) represented Optimal in a matter previously pending in this Court, *Rembaum et al. v. Banco Santander, S.A. et al.*, 10 Civ. 4095 (S.D.N.Y.). I further understand that the Court in *Rembaum* authorized seventeen depositions to be taken, including the deposition of Mr. Madoff. While the docket is silent with respect to the other depositions in *Rembaum*, Mr. Burnaby-Atkins and Mr. Clark were persons who had important responsibility for Optimal’s due diligence of the Madoff fund. Mr. Clark was also a named defendant in *Rembaum*. I expect that materials relating to Mr. Madoff, Mr. Burnaby-Atkins and Mr. Clark will provide insight into Optimal’s review and management of its Madoff investments.

7. I commenced a similar proceeding in June 2014 to obtain the transcript and exhibits from the deposition of Rajiv Jaitly, Optimal’s Chief Risk Officer, which was also produced during discovery in *Rembaum*. See *In re Berlamont*, No. 14 Misc. 190 (S.D.N.Y.). H&W ultimately provided the Jaitly materials to me, pursuant to my subpoena, on December 18, 2014, and I subsequently provided them to the investigating magistrate in Switzerland.

8. As of December 18, 2014, the deadline for evidentiary submissions in the Swiss proceeding against Mr. Echeverría was December 19, 2014. That deadline was subsequently

extended by the Swiss investigating magistrate into January 2015. I now understand that, in light of the Jaitly materials I provided to the Swiss investigating magistrate, the deadline for evidentiary submissions in the Swiss proceeding has again been extended until the Swiss investigating magistrate has an opportunity to examine Mr. Echeverría concerning the Jaitly materials.

9. After he was provided with the Jaitly materials, the Swiss investigating magistrate sent a letter, dated January 22, 2015, to my Swiss counsel and Mr. Echeverría's counsel indicating that the statements of Mr. Madoff, Mr. Burnaby-Atkins and Mr. Clark would be "very useful" to his investigation. He also indicated that Mr. Echeverría has repeatedly requested that Mr. Burnaby-Atkins and Mr. Clark be interviewed as part of the investigation. A copy of the letter from the Swiss investigating magistrate is attached hereto as Exhibit A.

10. I understand that documents produced in *Rembaum* are maintained by H&W, counsel for the defendants in *Rembaum*.

11. H&W, Optimal, Mr. Madoff, Mr. Burnaby-Atkins and Mr. Clark are not parties to the criminal proceeding currently pending in Switzerland against Mr. Echeverría.

12. Based on my knowledge of the criminal proceeding against Mr. Echeverría, I do not believe that obtaining the transcripts and exhibits from the depositions of Mr. Madoff, Mr. Burnaby-Atkins and Mr. Clark would violate any Swiss proof-gathering restrictions.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: March 5, 2015
Geneva, Switzerland

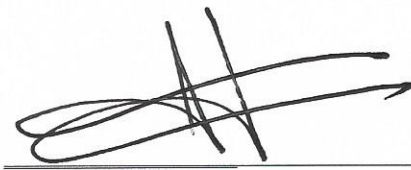

FRANCK BERLAMONT

Exhibit A

Republic and Canton of Geneva
JUDICIAL BRANCH
Public Prosecutor

Geneva, January 22, 2015

Prosecutor's Office
Route de Chancy 6 b
P.O. Box 3565
CH – 1211 GENEVA 3

Please address all correspondence
personally to the undersigned Prosecutor

FAX

Ref. no.: PP no. P/4010/2009
v. M. ECHEVERRIA
Please include this reference number in
all correspondence.

Re.: Criminal proceedings no. P/4010/2009 Franck Berlamont v. Manuel Echeverria
Statements of Messrs. Madoff, Burnaby-Atkins, and Clark

Recipient(s): L. Moreillon, Esq. (Mr. Berlamont), fax no. 021 321 30 20

Message: Dear Sir:
As you are aware, I am responsible for the investigation in the criminal proceedings referred to herein, which were opened for a suspicion of mismanagement of funds against Mr. Manuel Echeverria with regard to an investment made by Mr. Franck Berlamont in the OPTIMAL STRATEGIC US EQUITIES investment fund.
Until late 2008, this MADOFF feeder fund had been managed by OIS Optimal Investment Services SA, Geneva, a company for which Mr. Manuel Echeverria served as CEO until summer 2008.
I have taken note of your fax dated January 22, 2015, regarding the statements made by Messrs. Madoff, Burnaby-Atkins, and Clark to the American authorities.
I would like to confirm that these statements are very useful for my investigation. Moreover, the interviews of Messrs. Burnaby-Atkins and Clark were requested multiple times by the Counsel of the accused.
Yours sincerely,

Sender: Marc Tappolet, Prosecutor
[signature]
[stamp]
Public Prosecutor of the Republic and Canton of Geneva

Number of pages: 1, including this one

CC: S. Lembo, Esq. (Mr. Echeverria), fax no. 058 261 57 01



République et canton de Genève
POUVOIR JUDICIAIRE
Ministère public

Genève, le 22 janvier 2015

Cabinet du Procureur
Route de Chancy 6 b
Case postale 3565
CH - 1211 GENEVE 3

Prière d'adresser toute la correspondance
au Procureur soussigné personnellement

TELECOPIE

Réf: PP N° P/4010/2009
c/M ECHEVERRIA
à rappeler lors de toute communication.

Concerne : Procédure pénale n° P/4010/2009 Franck BERLAMONT c/ Manuel ECHEVERRIA
Déclarations de MM. MADOFF, BURNABY-ATKINS et CLARK

Destinataire(s) : Me L MOREILLON (M BERLAMONT), avt, télécopie 021 321 30 20

Message : Maître,
Vous me savez être chargé de l'instruction de la procédure pénale visée en marge, ouverte pour un soupçon de gestion déloyale à l'encontre de Monsieur Manuel ECHEVERRIA, s'agissant d'un investissement effectué par Monsieur Franck BERLAMONT dans le fonds de placement OPTIMAL STRATEGIC US EQUITIES.
Ce feeder-fonds MADOFF était géré jusqu'à fin 2008 par OIS Optimal Investment Services SA, Genève, société dont le Directeur général était Monsieur Manuel ECHEVERRIA jusqu'en été 2008.
J'ai pris note de votre télécopie du 22 janvier 2015 concernant les déclarations faites par devant les autorités américaines de MM. MADOFF, BURNABY-ATKINS et CLARK.
Je vous confirme volontiers que ces déclarations sont est d'une très grande utilité pour mon instruction. L'audition de MM. BURNABY-ATKINS et CLARK avait d'ailleurs été plusieurs fois sollicitée par le Conseil du prévenu.
Avec mes salutations distinguées,

Expéditeur : Marc TAPPOLET, Procureur

Nombre de pages : 1, y compris la présente.

Copie(s) : Me S LEMBO (M ECHEVERRIA), avt, télécopie 058 261 57 01





Certification of Translation



COUNTY OF MIDDLESEX
COMMONWEALTH OF MASSACHUSETTS

On this 9th day of February, 2015

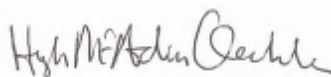
Elizabeth Yellen

of Linguistic Systems, Inc., 201 Broadway, Cambridge, Massachusetts 02139,
completed the attached translation into English of the following file:

Lettre Procureur du 22.1.2015.pdf

The translation has been made faithfully of her own knowledge by her and that the translation is a true and correct version of the original French text, to the best of her knowledge and belief.

Her qualifications as translator include familiarity with English as a native language and with French as an acquired language, and with said languages as languages of instruction and use for more than 28 years, and that she received a Ph.D. from the University of Michigan, Ann Arbor and she is employed as a freelance translator by Linguistic Systems, Inc.



Hugh Oechler
Translation Project Manager

